ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WHEATLAND TERMINATING THE DEVELOPMENT AGREEMENT THE CITY EXECUTED WITH LAKEMONT OVERLAND CROSSING, LLC, WHEATLAND HERITAGE OAKS, LLC, AND TRIVEST LAND COMPANY, INC.

The City Council of the City of Wheatland does ordain as follows:

SECTION 1. Purpose and Authority. The purpose of this ordinance is to terminate the development agreements between the City and Lakemont Overland Crossing, LLC, Wheatland Heritage Oaks, LLC, and Trivest Land Company, Inc. This ordinance is adopted pursuant to Government Code sections 65864 through 65869.5, Chapter 17.49 of the Wheatland Municipal Code (Ordinance No. 330), other applicable law, and sections 5.1.1 through 5.1.3 of each development agreement.

SECTION 2. Findings. Based on documentary and other evidence before the City Council, including the City's staff report, and on other testimony and evidence presented at the hearing on the matters referenced herein, the City Council hereby finds and determines:

a. Regarding the development agreement between the City and Lakemont Overland Crossing, LLC ("Lakemont"):

1. Lakemont defaulted on its obligations under the development agreement and failed to cure that default within 30 days after the date on which the City mailed its Notice of Default. This finding is based on the following:

A. On December 27, 2005, the City and Lakemont entered into a development agreement for the Jones Ranch subdivision.

B. Section 3.7.1 of this development agreement requires Lakemont to pay its pro-rata share of the cost of the City's Highway 65/Main Street Signal Improvements.

C. Amendment No. 1 to this development agreement, which was executed on June 10, 2008 and recorded on September 11, 2008, requires Lakemont to provide the City advance funding for its pro-rata share of the City's project costs for the City's Levee Development Fee Study.

D. Section 3.2.1.2 of the development agreement requires Lakemont to design, install and construct park improvements, and to grade and improve with drainage, irrigation, turf and walkways and other improvements, including the North Neighborhood Park (Lot A on the Tentative Map), High School Site Addition (Lot D on the Tentative Map), and landscape corridors/open space (Lots E through H and I through R on the Tentative Map). Section 3.2.4 of the development agreement provides Lakemont a credit of $3,000 per-dwelling-

unit against the City's Development Fee upon the City's acceptance of Lakemont's High School Site Addition improvements and continuing until the credit amount is depleted.

E. As of December 9, 2009, Lakemont's unpaid pro-rata share of the cost of the City's Highway 65/Main Street Signal Improvements was $66,826.49; Lakemont's unpaid pro-rata share of the City's Levee Development Fee Study was $22,492.57; and Lakemont was not in compliance with Sections 3.2.1.2 and 3.2.4 of the development agreement. The City therefore determined that Lakemont had defaulted on its obligations under the development agreement.

F. Section 5.1.1 of the development agreement requires the City to provide Lakemont 30-days notice of its alleged default in writing, specifying the nature of the alleged default and the manner by which Lakemont could satisfactorily cuer its default. On December 9, 2009, the City Manager mailed the City's Notice of Default to Lakemont. This Notice of Default: (1) provided Lakemont notice that it had defaulted on its obligations under the development agreement by failing to pay its pro-rata share of the Highway 65/Main Street Signal Improvements, failing to pay its pro-rata share of the City's Levee Development Fee Study, and failing to comply with Section 3.2.1.2 and 3.2.4 of the development agreement; and (2) explained that Lakemont's default could be satisfactorily cured if Lakemont reimbursed the City $66,826.49 for Lakemont's pro-rata share of the Highway 65/Main Street Signal Improvements, advanced the City $22,492.57 to satisfy Lakemont's pro-rata share of the City's Levee Development Fee Study, and produced evidence of compliance with sections 3.2.1.2 and 3.2.4 of the development agreement.

G. Pursuant to section 5.1.1 of the development agreement, Lakemont was required to cure its default within 30 days after the date on which the City mailed its Notice of Default, or no later than January 8, 2010. As of January 8, 2010, Lakemont had not cured its default.

2. The City provided timely notice of its intent to terminate Lakemont's development agreement, pursuant to Government Code sections 65867 and 65868 and section 5.1.2 of the development agreement.

A. Section 5.1.2 of the development agreement required the City to provide Lakemont a Notice of Intent to Terminate the development agreement after the 30-day period to cure Lakemont's default had expired. On February 24, 2010, the City Manager mailed a Notice of Intent to Terminate the development agreement to Lakemont.

B. Section 5.1.2 of the development agreement also requires the City Council to consider terminating the development agreement within 30 days after the date on which the City mails its Notice of Intent to Terminate the development agreement to Lakemont. Government Code sections 65867 and 65868 requires this notice to be provided at least 10 days prior to the date of the City Council's hearing regarding terminating the development agreement. The City Council's hearing at which it considered terminating Lakemont's development agreement was held on March 9, 2010, which occurred less than 30 days and more than 10 days after the City provided Lakemont a Notice of Intent to Terminate the development agreement.

3. On the basis of substantial evidence, Lakemont has materially breached the terms of the development agreement with the City and the City may therefore terminate that development agreement.

b. Regarding the development agreement between the City and Wheatland Heritage Oaks, LLC ("Heritage Oaks"), the City Council hereby finds and determines:

1. Heritage Oaks defaulted on its obligations under the development agreement and failed to cure that default within 30 days after the date on which the City mailed its Notice of Default. This finding is based on the following:

A. On February 26, 2006, the City and Heritage Oaks entered into a development agreement for the Heritage Oaks Estates-East subdivision.

B. Section 3.7.1 of this development agreement requires Heritage Oaks to pay its pro-rata share of the cost of the City's Highway 65/Main Street Signal Improvements.

C. Amendment No. 1 to this development agreement, which was executed on June 10, 2008 and recorded on September 11, 2008, requires Heritage Oaks to provide the City advance funding for its pro-rata share of the City's project costs for the City's Levee Development Fee Study.

D. Section 2.8.1 of the development agreement requires Heritage Oaks to pay all applicable City entitlement and processing fees and charges, and City Resolution 01-07 provides for full cost billing and reimbursement.

E. As of December 9, 2009, Heritage Oaks' unpaid pro-rata share of the cost of the City's Highway 65/Main Street Signal Improvements was $15,968.10; Heritage Oaks' unpaid pro-rata share of the City's Levee Development Fee Study was $18,484.46; and Heritage Oaks was $25,227.09 delinquent in its fee obligations, which were almost entirely engineering charges for its development that were incurred during the 2007-2008 fiscal year. The City therefore determined that Heritage Oaks had defaulted on its obligations under the development agreement.

F. Section 5.1.1 of the development agreement requires the City to provide Heritage Oaks 30-days notice of its alleged default in writing, specifying the nature of the alleged default and the manner by which it could satisfactorily cure that default. On December 9, 2009, the City Manager mailed the City's Notice of Default to Heritage Oaks. This Notice of Default: (1) provided Heritage Oaks notice that it had defaulted on its obligations under the development agreement by failing to pay its pro-rata share of the Highway 65/Main Street Signal Improvements, failing to pay its pro-rata share of the City's Levee Development Fee Study, and failing to reimburse the City for certain fees and charges; and (2) explained that Heritage Oaks' default could be satisfactorily cured if Heritage Oaks reimbursed the City $15,968.10 for Heritage Oaks' pro-rata costs of the Highway 65/Main Street Signal

Improvements, advanced the City $18,484.46 to satisfy Heritage Oaks' pro-rata share of the City's Levee Development Fee Study, and reimbursed the City for fees and charges in the amount of $22,227.09.

G. Pursuant to section 5.1.1 of the development agreement, Heritage Oaks was required to cure its default within 30 days after the date on which the City mailed its Notice of Default, or no later than January 8, 2010. As of January 8, 2010, Heritage Oaks had not cured its default.

2. The City provided timely notice of its intent to terminate Heritage Oaks' development agreement, pursuant to Government Code sections 65867 and 65868 and section 5.1.2 of the development agreement.

A. Section 5.1.2 of the development agreement requires the City to provide Heritage Oaks a Notice of Intent to Terminate the development agreement after the 30-day period to cure Heritage Oaks' default had expired. On February 24, 2010, the City Manager mailed a Notice of Intent to Terminate the development agreement to Heritage Oaks.

B. Section 5.1.2 of the development agreement also requires the City Council to consider terminating the development agreement within 30 days after the date on which the City mails its Notice of Intent to Terminate the development agreement to Heritage Oaks. Government Code sections 65867 and 65868 requires this notice to be provided at least 10 days prior to the date of the City Council's hearing regarding terminating the development agreement. The City Council's hearing at which it considered terminating Heritage Oaks' development agreement was held on March 9, 2010, which occurred less than 30 days and more than 10 days after the City provided Heritage Oaks its Notice of Intent to Terminate the development agreement.

3. On the basis of substantial evidence, Heritage Oaks has materially breached the terms of the development agreement with the City and the City may therefore terminate that development agreement.

c. Regarding the development agreement between the City and Trivest Land Company, Inc. ("Trivest"):

1. Trivest defaulted on its obligations under the development agreement and failed to cure that default within 30 days after the date on which the City mailed its Notice of Default. This finding is based on the following:

A. In 2007, Trivest acquired the non-residential portion of the Heritage Oaks property, specifically lots 3, 6 and 7 of the large lot final map. As part of this transaction, there was a partial assignment of the Heritage Oaks development agreement to Trivest. The sewer capacity rights of the development agreement were not assigned to Trivest.

B. Section 3.7.1 of the development agreement that was assigned to Trivest requires Trivest to pay its pro-rata share of the cost of the City's Highway 65/Main Street Signal Improvements.

C. Amendment No. 1 to the development agreement that was assigned to Trivest, which was executed on June 10, 2008 and recorded on September 11, 2008, requires Trivest to provide the City advance funding for its pro-rata share of City's project costs for the City's Levee Development Fee Study.

D. Section 2.8.1 of the development agreement that was assigned to Trivest requires Trivest to pay all applicable City entitlement and processing fees and charges, and City Resolution 01-07 provides for full cost billing and reimbursement.

E. As of December 9, 2009, Trivest's unpaid pro-rata share of the cost of the City's Highway 65/Main Street Signal Improvements was $218,076.22; Trivest's unpaid pro-rata share of the City's Levee Development Fee Study was $2,063.00; and Trivest was $347.50 delinquent in its fee obligations to the City. The City therefore determined that Trivest had defaulted on its obligations under the development agreement.

F. Section 5.1.1 of the of the development agreement that was assigned to Trivest requires the City to provide Trivest 30-days notice of its alleged default in writing, specifying the nature of the alleged default and the manner by which it could satisfactorily cure its alleged default. On December 9, 2009, the City Manager mailed the City's Notice of Default to Trivest. This Notice of Default: (1) provided Trivest notice that it had defaulted on its obligations under the development agreement by failing to pay its pro-rata share of the Highway 65/Main Street Signal Improvements, failing to pay its pro-rata share of the City's Levee Development Fee Study, and failing to pay certain fees and charges to the City; and (2) explained that Trivest's default could be satisfactorily cured if Trivest reimbursed the City $218,076.22 for Trivest's pro-rata costs of the Highway 65/Main Street Signal Improvements, advanced the City $2,063.00 to satisfy Trivest's pro-rata share of the City's Levee Development Fee Study, and reimbursed the City for fees and charges in the amount of $347.50.

G. Pursuant to section 5.1.1 of the development agreement that was assigned to Trivest, Trivest was required to cure its default within 30 days after the date on which the City mailed its Notice of Default, or no later than January 8, 2010. As of January 8, 2010, Trivest had not fully cured its default. Trivest repaid the City in the amount of $2,063.00 to satisfy Trivest's pro-rata share of the City's Levee Development Fee Study, and reimbursed the City in the amount of $347.50 for certain City fees and charges.

2. The City provided timely notice of its intent to terminate Trivest's development agreement, pursuant Government Code section 65867 and 65868 and section 5.1.2 of the development agreement.

A. Section 5.1.2 of the development agreement that was assigned to Trivest requires the City to provide Trivest a Notice of Intent to Terminate the development

agreement after the 30-day period to cure Trivest's default expired. On February 24, 2010, the City Manager mailed a Notice of Intent to Terminate the development agreement to Trivest.

B. Section 5.1.2 of the development agreement that was assigned to Trivest also requires the City Council to consider terminating the development agreement within 30 days after the date on which the City mailed its Notice of Intent to Terminate the development agreement to Trivest. Government Code sections 65867 and 65868 requires this notice to be provided at least 10 days prior to the date of the City Council's hearing regarding terminating the development agreement. The City Council's hearing at which it considered terminating Trivest's development agreement was held on March 9, 2010, which occurred less than 30 days and more than 10 days after the City provided Trivest its Notice of Intent to Terminate the development agreement.

3. On the basis of substantial evidence, Trivest has materially breached the terms of the development agreement with the City and the City may therefore terminate that development agreement.

d. Pursuant to Government Code section 65091, subdivision (a)(4), on February 26, 2010, the City provided adequate notice of its hearing at which it would consider terminating Lakemont's, Heritage Oaks' and Trivest's development agreements to each landowner owning property located within 300 feet of any property that is subject to one of these development agreements. This finding is based on all of the following:

1. On February 26, 2010, which was at least 10 days prior to the March 9, 2010 City Council hearing at which the City Council considered terminating of Lakemont's, Heritage Oaks' and Trivest's development agreements, the City mailed a notice of the March 9, 2010 public hearing to each landowner that owns property located within 300 feet of any property that was subject to one of these development agreements.

2. The notice indicated that at the March 9, 2010 City Council hearing, the City Council would consider terminating the development agreements it entered into with: (1) Lakemont; (2) Heritage Oaks; and (3) Trivest.

e. Pursuant to Government Code sections 6061, 65867, 65868 and 65090, subdivision (a), on February 26, 2010, the City published one time in the Marysville Appeal-Democrat, a newspaper of general circulation within the City, a notice of the City Council's public hearing at which it would consider terminating Lakemont's, Heritage Oaks' and Trivest's development agreements. This finding is based on all of the following:

1. On February 26, 2010, which was at least 10 days prior to the March 9, 2010 City Council hearing at which the City Council considered terminating of Lakemont's, Heritage Oaks' and Trivest's development agreements, the City published a notice of public hearing in the Marysville Appeal-Democrat, a newspaper of general circulation within the City.

2. The published notice indicated that at the March 9, 2010 City Council hearing the City Council would consider terminating the development agreements it entered into with: (1) Lakemont; (2) Heritage Oaks; and (3) Trivest.

f. At its March 9, 2010 City Council hearing, the City Council considered all documentary and other evidence before it and all testimony presented at the hearing that was related to the alleged default and possible termination of each development agreement. Interested parties were provided an opportunity to be heard and to submit written comments prior to and at the public hearing and to present evidence related to the termination of each development agreement.

g. Having complied with the provisions set forth at Government Code sections 65864 through 65869.5, Chapter 17.49 of the Wheatland Municipal Code (Ordinance No. 330), the terms of each development agreement and other applicable law as set forth in these findings, the City has satisfied all of the conditions precedent to terminating each development agreement. The City Council may proceed with terminating the development agreements.

SECTION 3. The City Council hereby terminates the development agreement with Lakemont dated December 27, 2005, as amended.

SECTION 4. The City Council hereby terminates the development agreement with Heritage Oaks dated February 26, 2006, as amended.

SECTION 5. The City Council hereby terminates the Heritage Oaks development agreement, as amended, that was assigned to Trivest related to Trivest's acquisition of the non-residential portion of that property described in the Heritage Oaks Development Agreement property description, specifically lots 3, 6 and 7 of the large lot final map.

SECTION 6. The City Council hereby determines:

a. The City shall retain the sewer connection charge advances that each developer paid under the terms of its development agreement with the City. The advance payment amounts shall stay with the development land as a credit toward sewer connection charges that may be due upon future development of that property, unless otherwise transferred to another developer as set forth in subsection (c).

b. Notwithstanding subsection (a), any property that was subject to one of the development agreements that was terminated by this ordinance no longer shall have any long-term sewer connection rights associated with it. Sewer capacity available to serve that property and applicable sewer connection charges shall be determined based on the conditions prevailing at the time of development and application for a sewer connection is made for the property.

c. If another developer in the City is ready, willing and able to utilize any sewer capacity formerly allocated to the development land, then, provided the new developer enters into an agreement with the City for sewer capacity and pays the same sewer connection charge advances that were originally paid by a defaulting developer, then the City will collect the sewer

connection charge advance payment from, and transfer the defaulting developer's former sewer allocation to, the new developer.

d. If the City is able to transfer the sewer allocation to another developer, as described in subsection (c), then, upon payment of the sewer connection advance by the other developer, the City will refund to the defaulting developer its sewer connection charge advance (without interest).

SECTION 7. Effective Date. This ordinance shall take effect 30 days after its final passage.

SECTION 8. Posting. Within 15 days after the date of passage of this ordinance, the City Clerk shall post a copy of it in at least three public places in the City.

INTRODUCED by the City Council on the 9th day of March, 2010.

PASSED AND ADOPTED by the City Council of the City of Wheatland on the ____ day of _____, 2010, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

_____
Enita Elphick, Mayor

Attest:

_____
Lisa J. Thomason, City Clerk

I hereby certify that the foregoing is a true and correct copy of City of Wheatland Ordinance No. ____, which ordinance was duly introduced, adopted and posted pursuant to law.

_____
Lisa J. Thomason, City Clerk